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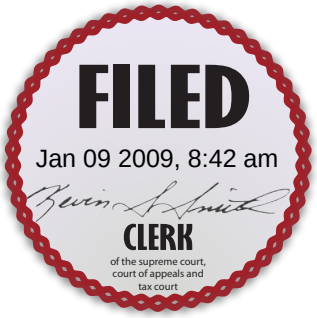

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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF M.B. and S.B.	)	
Tiffany Black, Mother,	)	
Appellant-Respondent,	)	
vs.	)	No. 34A02-0805-JV-437
HOWARD COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0703-JT-9 & 34C01-0703-JT-10

January 9, 2009

OPINION ON REHEARING - NOT FOR PUBLICATION

BROWN, Judge

Mother appealed the trial court's judgment denying her motion to set aside its order for the voluntary termination of her parental rights to her children, M.B. and S.B. We revised and restated the issues raised on appeal as: (1) whether the addendum to Mother's voluntary consent to termination form was void and unenforceable as a matter of law and (2) whether the trial court erred when it denied Mother's motion to set aside. We reviewed these issues in a published memorandum decision and determined that the addendum was void. We then affirmed the trial court's denial of Mother's motion to set aside. *See In re M.B. and S.B.*, No. 34A02-0805-JV-437 (Ind. Ct. App. October 31, 2008). Mother subsequently filed a petition for rehearing. We affirm our opinion today but grant Mother's petition for rehearing for the limited purpose of addressing Mother's contention that, in failing to consider the transcript from the February 2008 motion to set aside hearing, this Court failed to consider a pivotal piece of evidence and in so doing made erroneous findings.

The record on direct appeal contained the transcripts from four separate hearings held in the underlying cause. These transcripts were bound together in one volume; however, the volume did not contain a table of contents. After re-reviewing the record, it is clear that we did read and review the transcript from the February 2008 hearing during Mother's prior appeal but overlooked the page of the transcript that indicated the hearing had switched from a three-month post-termination review hearing held on September 10, 2007, to the February 28, 2008 motion to set aside hearing. Nothwithstanding this oversight, we can assure Mother that all portions of the record

were reviewed, including the transcript of the February 2008 hearing, and our opinion on the matter remains unchanged.

As we explained in our original opinion, in order to make a successful claim under Indiana Trial Rule 60(B)(3), Mother was required to show, among other things, that her consent to the termination of her parental rights was obtained through fraud, negligent misrepresentation, or misconduct on the part of HCDCS. Although the transcript of the February 2008 hearing contains many admissions by Mother and her attorney, Brent Dechert, that *Dechert* had informed Mother the addendum would allow her to continue to visit with the children despite her voluntary relinquishment of parental rights so long as she cooperated with HCDCS,[1] Mother failed to provide any evidence whatsoever that *HCDCS* had committed fraud, misconduct, or had made any material representation, false or otherwise, that Mother had relied upon in agreeing to voluntarily relinquish her parental rights. To the contrary, it was Mother, through her attorney, who initially informed both the trial court and HCDCS that she wanted to voluntarily relinquish her

[1] For example, Dechert made the following statement to Mother during the February 2008 hearing, "And then I also told you that there's an option here that we have to insure that you might have continued contact with your children if you sign some documents, is that right?" Tr. p. 29. To which Mother replied, "Yes." Id. Later during the same hearing, the following exchange took place:

[Dechert]:	[D]id I explain to you what your visitation rights would be . . . back in June of 2007?
[Mother]:	Yes.
[Dechert]:	What do you recall me explaining to you?
[Mother]:	I recall you explaining that the visits would be, if at all, twice, two hours every other week or twice a month . . . .
[Dechert]:	Did I tell you that at least they should remain the same –
[Mother]:	They should remain the same, or right.
[Dechert]:	-- as what you were getting up until June of 2007.
[Mother]:	Exactly.

Id. at 34-5. Dechert further stated, "And I told you you'd be able to keep seeing them unless you're the one who screwed up, I told you that, didn't I?" Id. at 40. Mother responded, "Right." Id.

parental rights to M.B. and S.B. at the commencement of the June 4, 2007 involuntary termination hearing. Moreover, not only was Dechert the sole drafter of the addendum, but the only statement made by HCDCS regarding visitation during the June 2007 hearing was an acknowledgment by case manager Simmonds that HCDCS believed it was in the children's best interests to continue to visit with Mother *at that point in time.* In fact, when questioned by Dechert during the February 2008 hearing as to whether she had had "any conversations with any of the case workers or CASA or anybody else" about what her visitation privileges would be after the termination hearing, Mother responded "No." Tr. p. 61. Likewise, when Dechert again asked, "Ok, and you didn't have any conversation with anybody else besides me that day, is that right[,]" Mother responded "Right." Id.

Finally, the record revealed that Mother repeatedly admitted, both during the June 4, 2007 and February 28, 2008 hearings, that she understood at the time that she signed the voluntary consent form not only that future visitation with the children was not "guaranteed" but that any future visitation privileges that might be granted could also be discontinued if a court later determined such visitation was no longer in the children's best interests. Id. at 13, 50-52, 57-58, 59. Notwithstanding this uncertainty regarding future visitation with the children, Mother nevertheless repeatedly expressed her commitment to proceeding with the voluntary relinquishment of her parental rights. Moreover, when questioned by Dechert during the February 2008 hearing as follows, "[W]ould you have signed [the consent form] if . . . you thought they were gonna cut off

visitation[,]" Mother replied, "I thought that my rights were gonna be terminated anyway so with that being said, I voluntarily relinquished them." Id. at p. 62.

In light of Mother's testimony cited above, in addition to the uncontroverted evidence establishing Mother initiated the voluntary consent proceedings as well as drafted the addendum, we stated in our original opinion that "there is absolutely no evidence in the record indicating HCDCS committed fraud or engaged in any misconduct or misrepresentation in an attempt to induce Mother to voluntarily relinquish her parental rights to M.B. and S.B." Slip op. p. 21. We therefore concluded that Mother had failed to carry her burden of showing sufficient grounds for relief under Trial Rule 60(B)(3) and that she was committed to proceeding with her decision to voluntarily relinquish her parental rights to M.B. and S.B. notwithstanding the uncertainty surrounding any future visitation she may or may not have with the children.

After re-reviewing the record, we are of the same opinion today. In addition, we hold that the remaining arguments presented in Mother's petition for rehearing were adequately addressed in our original opinion. Accordingly, we grant rehearing for the limited purpose of clarifying and affirming our original opinion as set forth herein.

BAKER, C. J. and MATHIAS, J. concur